

AGREEMENT BETWEEN
THE BOEING COMPANY
PHANTOM WORKS
P.O. BOX 3999
SEATTLE, WA 98124-2499

ORIGINAL

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
3701 NORTH FAIRFAX DRIVE
ARLINGTON, VA 22203-1714

CONCERNING

UNMANNED COMBAT AIR VEHICLE
ADVANCE TECHNOLOGY DEMONSTRATION
(UCAV ATD PHASE II)

Agreement No.: MDA972-99-9-0003

DARPA Order No.: G072 Amendments 18/19/20

Total Estimated Government Funding for the Phase II Agreement: \$110,000,000

Total Estimated Contractor Funding for the Phase II Agreement: \$21,000,000

Total Estimated Agreement Value: \$131,000,000

Total Government Funds Obligated to date: \$14,848,000

Total Government Funds Obligated by this action: \$14,848,000

Authority: 10 U.S.C. 2358 and 10 U.S.C. 2371 and Section 845 of the 1994 National Defense Authorization Act, as amended

Line of Appropriation:

AA 5793600 299 4702 632530 000000 93059 63728F 503000 F03000 (2530PROJ) S93059

FA875090005

\$574,000

AB 5793600 299 4769 63670A 058800 00000 63601F 667100 F27900

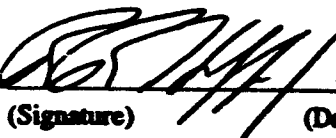
\$774,000

AC 9790400 1320 G072 P9Z30 2525 DPAC 9 5129 S12123 PZ30 63765E

\$13,500,000

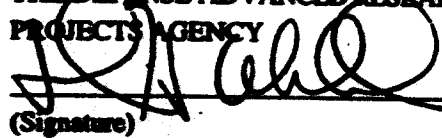
This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Defense Advanced Research Projects Agency (DARPA), and The Boeing Company pursuant to and under U.S. Federal law.

FOR THE BOEING COMPANY
PHANTOM WORKS

 03/24/99
(Signature) (Date)

R.R. Hoffman Jr. UCAV Contracts Manager
(Name, Title)

FOR THE UNITED STATES OF AMERICA
THE DEFENSE ADVANCED RESEARCH
PROJECTS AGENCY

 03/24/99
(Signature) (Date)

John H. Abland, Director, Office Management Operations
(Name, Title)

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ARTICLE I: SCOPE OF THE AGREEMENT

The Boeing vision for Phase II and the RR&OE Phase of the Unmanned Combat Air Vehicle (UCAV) Advanced Technology Demonstration (ATD) is founded on the iterative, collaborative working relationship between the DARPA/USAF UCAV Program Office and Boeing established during Phase I of the program. DARPA, the USAF, and Boeing are bound to each other in the performance of this program by a duty of good faith, ethical conduct, and best effort in achieving all program objectives. Within this context of collaboration, the Boeing approach, summarized here and detailed in the terms to this Agreement will result in the satisfaction of all UCAV ATD program objectives, with the end demonstration of an affordable, realizable UCAV system to effectively pursue 21st century SEAD/strike missions as currently envisioned.

The Boeing approach to the UCAV ATD program was guided by the completion criteria developed in response to ATD Objectives given in the RFP, the investment-versus-benefit prioritized set of UCAV Operational System (UOS) risks identified, and the technology maturation plans of other programs. In Phase II, Boeing will develop the two air vehicle and reconfigurable MCS UCAV Demonstration System and expand the Phase I UCAV Operational System Simulation. Two major System Simulation Demonstrations will be conducted, as well as two six month flight demonstration periods. Boeing will drop a small miniature test munition (not live ordnance) from the internal bay of one of the two Air Vehicles and take Synthetic Aperture Radar images with the other during the second demonstration period. In addition, Boeing will participate in several EFX exercises during Phase II and RR&OE to demonstrate operational suitability. In RR&OE, Boeing offers a third low observable Air Vehicle as part of its priced option.

The Boeing approach incorporates systematic decomposition of, and risk assessments for, capabilities and attributes of the UOS. The proposed system demonstrations have integrated identified risk mitigation events for each attribute into a cohesive program with well-defined goals and completion criteria. The approach takes full advantage of the customer sponsored exposure to many applicable technology development programs and frequent interactions with both the technical and operational UCAV customers. Boeing has exploited specific programs, projects, expertise and facilities from DARPA, the USAF and NASA to reduce risk, mature its design, and maximize the return on the Governments' investment.

Boeing (including their suppliers) estimates that the Statement of Work of this Agreement can be accomplished with an estimated Government funding under this Section 845 agreement, of \$110,000,000 and an estimated Contractor (Boeing and their suppliers) aggregate funding of \$ 21,000,000 from the effective date of this Agreement through completion of Phase II. This total program cost estimate of \$131,000,000 is predicated on Boeing's commitment to a Phase II Program that is priced using Boeing IRAD rates. By entering into this Agreement, Boeing commits to performing all Boeing work under this agreement free of any fee, G&A, FCCOM and at the appropriate Boeing IRAD rates and further to provide the additional \$21,000,000 in Boeing funding according to the schedule set forth in Article XXV. If either the Government or Boeing is unable to provide its total contribution, the other Party may reduce its project funding contribution by a proportionate amount. Such adjustment, if required, will be made at the end of the program.

This Agreement is an "other transaction" pursuant to 10 U.S.C. 2358 and 10 U.S.C. 2371 and section 845 of the 1994 National Defense Authorization Act as amended. The Parties agree that the principal purpose of this Agreement is to stimulate the Contractor to provide best efforts in development even though the acquisition of property or services for the direct benefit or use of the Government is present. The Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) apply only as specifically referenced herein. This Agreement is not a procurement contract or grant agreement for purposes of FAR 31.205-18.

ARTICLE II: TERM

A. The Term of this Agreement

This Agreement commences upon the date of the last signature hereon and continues for the duration of Phase II of the UCAV ATD Program with an option for a Risk Reduction and Operational Evaluation (RR&OE) Phase. For planning purposes, the estimated period of performance for Phase II is through 30 September 2002.

B. Termination Provisions

Subject to a reasonable determination that the project will not produce beneficial results commensurate with the expenditure of resources, the Government may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, the Government shall have paid-up rights in data as described in Article X and XI below. The Government and the Contractor will negotiate in good faith an equitable reimbursement for work performed at the time of Government termination. Failure of the Parties to agree to an equitable adjustment will be resolved pursuant to Article IX, Disputes.

ARTICLE III: Reserved

ARTICLE IV: IDENTIFICATION AND SEGREGATION OF WORK TO BE PERFORMED UNDER THIS AGREEMENT:

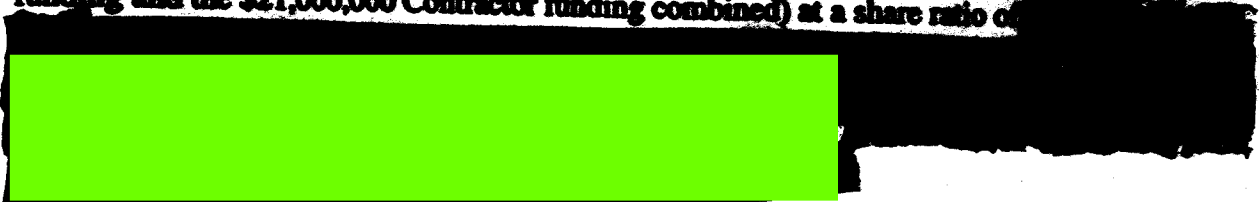
The contractor will separately account for costs incurred under this agreement.

Item 0001

Item 0001 is to complete the Phase II activities defined and in accordance with the terms of this Agreement.

Total Estimated Government Cost:	\$110,000,000
Total Estimated Boeing Cost:	\$21,000,000
Total Estimated Cost of Phase II:	\$131,000,000

This article is subject to the provisions of FAR clause 52.216-7, Allowable Cost and Payment. Boeing agrees to share with DARPA, all costs beyond \$131,000,000 (\$110,000,000 Government funding and the \$21,000,000 Contractor funding combined) at a share ratio of



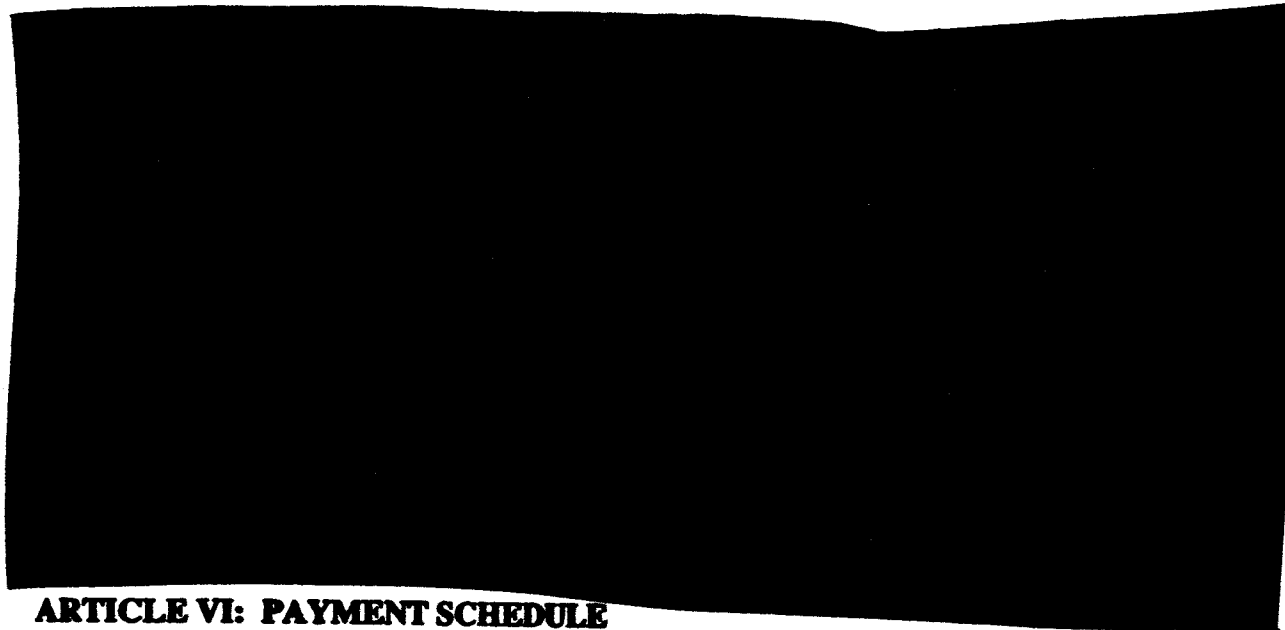
Item 0002 (OPTION)

Item 0002 is to complete the optional Risk Reduction and Operation Evaluation RR&OE Phase activities defined and in accordance with the TDD, IMP and UCAV System Maturation Plan (SMP).

Total Estimated Cost: 

This option may be exercised on or before February 1, 2002. Exercise of this Option will be via a separate business arrangement agreeable to both Parties, on a Cost Plus Incentive or Award Fee basis with mutually agreed to Terms and Conditions for that type of arrangement to be negotiated separately prior to exercise of the Option.

ARTICLE V: PAYMENT INCENTIVE



ARTICLE VI: PAYMENT SCHEDULE

A. Payment of Allowable Cost



B. Modifications

1. At any time during the term of the Agreement, progress or results may indicate that a change in the Agreement would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to this Agreement or payment schedule and any mutually acceptable changes to the milestone payment provisions in Attachment 2, will be documented in a letter and submitted by the Contractor to the Government Program Manager with a copy to the Government

Invoice Number

A description of services performed

Quantity of service received or performed

The time of period covered by the invoice

Terms of Payment

Payment Office

Amount claimed

2. The contractor shall submit an original and five (5) copies of all invoices to the Agreements Officer for payment approval. After written verification of the work accomplishment by the Government Program Manager, and approval by the Agreements Officer, the invoices will be forwarded to the payment office within fifteen (15) calendar days of receipt of the invoices at DARPA. Payment approval for the final Payable Milestone will be made after reconciliation. Payments will be made by Defense Accounting Office, DFAS, Attention: Vendor Pay, 8899 East 56th Street, Indianapolis, IN 46249-1325 within fifteen (15) calendar days of DARPA's transmittal. Subject to change only through written Agreement modification, payment shall be made via electronic funds transfer to the Contractor's address set forth below:

3. Bank Account of Payee:

Bank: Chase Manhattan Bank

Address: World Headquarters, 10th Floor, 270 Park Ave.,
Global Aerospace Group
New York, NY 10017

Routing Transit Number: 0210-0002-1

Depositor Account Title: Boeing Defense & Space Group - Master

Depositor Number: XXXXXXXXXX

(PLEASE INCLUDE AGREEMENT NUMBER)

Agreements Administrator. This letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. Any subsequent modification is subject to mutual agreement in writing signed by authorized representatives of both parties. The Government is not obligated to pay for any proposed change until formally revised by the Government Agreements Administrator and made part of this Agreement.

2. The Government Program Manager shall be responsible for the review and verification of any recommendations to revise or otherwise modify this Agreement.
3. For minor or administrative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to Government or Contractor personnel identified in the Agreement, etc.) no signature is required by the Contractor.
4. The Government will be responsible for effecting all modifications to this agreement.

ARTICLE VII: AGREEMENT ADMINISTRATION

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

DARPA, Robin M. Swatloski, Agreements Officer, Tel: (703) 696-0081

CONTRACTOR: Roger R. Hoffman, Boeing UCAV Contract Manager, Tel: (206) 662-0746

Technical matters under this Agreement shall be referred to the following representatives:

DARPA: Dr. Larry Birckelbaw, Program Manager, Tel: (703) 696-2362

USAF: Lt Col Michael B. Leahy Jr., Deputy Program Manager, Tel: (703) 696-2369

CONTRACTOR: Richard Alldredge, Boeing UCAV Program Manager, Tel: (206) 662-1608

Each party may change its representatives named in this Article by written notification to the other party. The Government will effect the change as stated in item B, 4 of Article VI above.

ARTICLE VIII: OBLIGATION AND PAYMENT

The parties will negotiate payment methods for the RR&OE phase prior to the start of performance for that phase.

A. Obligation

The Government's liability to make payments to the Contractor is limited to only those funds obligated under this Agreement or by amendment to the Agreement. DARPA may obligate funds to the Agreement incrementally.

B. Payments

1. Prior to the submission of invoices to DARPA by the Contractor Administrator, the Contractor shall have and maintain an accounting system which complies with Cost Accounting Standards (CAS) and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. The following information shall be included on each invoice:

Agreement Number

4. **Limitation of Funds:** In no case shall the Government's financial liability exceed the amount obligated under this Agreement.

5. **Financial Records and Reports:**

The Contractor's relevant financial records are subject to examination or audit on behalf of DARPA by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The Contractors shall provide the Agreements Administrator or designee direct access to sufficient records and information of the Contractor to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

6. **Business Status Report:**

A Business Status Report will be submitted monthly. The business status report will provide summarized details of the resource status of this Agreement (see sample format below.) This report will be organized to track the contractor's Work Outline, and will include a monthly accounting of current expenditures as planned in your IMP and IMS, and will follow the Work Outline Structure at least two levels below the segment level. Any major deviations shall be explained along with discussions of the adjustment actions proposed. The monthly Business Status Report will also provide an updated Integrated Master Plan (IMP) and Integrated Master Schedule (IMS). Updates will include the status of IMS tasks (updated Gantt chart) and the status of the detailed criteria and significant accomplishments within the IMP. Any changes to the IMP or IMS other than status updated should be highlighted. Since the IMP is part of the Agreement, any changes (other than status) will required an amendment to this Agreement. IMS changes do not require an Agreement amendment.

CONTRACT START DATE:

CONTRACT END DATE:

TOTAL CONTRACT VALUE:

FUNDING STATUS "AS OF" DATE:

TASK ELEMENT	CUMULATIVE TO DATE			AT COMPLETION	
	PLANNED EXPEND	ACTUAL EXPEND	% COMPLETE	BAC*	LRE**
SUBTOTAL					
MANAGEMENT RESERVE					
UNALLOCATED RESOURCES					
TOTAL					

*Budget At Completion (BAC) changes only with scope changes (not affected by inflation / currency)

**Latest Revised Estimate (LRE)

ARTICLE IX: DISPUTES

A. General

Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between the Government and the Contractor concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may only be raised under this Article.
2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the Director of DARPA in the interests of justice waives this requirement.
3. Failing resolution by mutual Agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the Government Agreements Administrator or Contractor Administrator, as the case may be) in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the Director, Office of Management Operations and Representative of the Contractor ("Contractor Representative"). The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Director, Office of Management Operations and the Contractor Representative shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.
4. In the absence of a joint decision, upon written request to the Director of DARPA, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The Director of DARPA may elect to conduct this review personally or through a designee or jointly with a representative of the other Party who is a senior official of the Party. Following the review, the Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding. If not satisfied with such resolution, the Contractor may within thirty (30) calendar days of receipt of the notice of resolution pursue any right and remedy in a court of competent jurisdiction as provided by 28 USC 1491.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of DARPA funding disbursed as of the time the dispute arises. In no event shall either party be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages. In no event shall the liability of the Contractor or any other entity performing research activities under this Agreement exceed the funding it has received up to the time of incurring such liability.

ARTICLE X: PATENT RIGHTS

A. Definitions

1. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available on reasonable terms.
4. "Subject invention" means any Contractor invention conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Unless the Contractor shall have notified DARPA (in accordance with subparagraph C.2 below) that the Contractor does not intend to retain title, the Contractor shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of the Articles of Collaboration, this Article, and 35 U.S.C. § 202. With respect to any subject invention in which the Contractor retains title, DARPA shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. Notwithstanding the above, the Contractor may elect as defined in its Articles of Collaboration to provide full or partial rights that it has retained to Contractor or other parties.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Contractor shall disclose each subject invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of

disclosure. The Contractor shall also submit to DARPA an annual listing of subject inventions.

2. If the Contractor determines that it does not intend to retain title to any such invention, the Contractor shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
3. The Contractor shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Contractor may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. Requests for extension of the time for disclosure election, and filing under Article VII, paragraph C, may, at the discretion of DARPA, and after considering the position of the Contractor, be granted.

D. Conditions When the Government May Obtain Title

Upon DARPA's written request, the Contractor shall convey title to any subject invention to DARPA under any of the following conditions:

1. If the Contractor fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that DARPA may only request title within sixty (60) calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
2. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph C of this Article; provided, that if the Contractor has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by DARPA, the Contractor shall continue to retain title in that country; or
3. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

E. Minimum Rights to the Contractor and Protection of the Contractor's Right to File

1. The Contractor shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph C of this Article. The Contractor license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Contractor within the corporate structure of which the Contractor

is a party and includes the right to grant licenses of the same scope to the extent that the Contractor was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The Contractor domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent the Contractor, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, DARPA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The Contractor agrees to execute or to have executed and promptly deliver to DARPA all instruments necessary to establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DARPA when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. The Contractor agrees to require, by written agreement, that employees of the Members of the Contractor, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to the Contractor, each subject invention made under this Agreement in order that the Contractor can comply with the disclosure provisions of paragraph C of this Article. The Contractor shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The Contractor shall notify DARPA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
4. The Contractor shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. MDA972-99-9-0003 awarded by DARPA. The Government has certain rights in the invention."

G. Lower Tier Agreements

The Contractor shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

H. Reporting on Utilization of Subject Inventions

The Contractor agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the subcontractor(s), and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with paragraph J of this Article. Consistent with 35 U.S.C. § 202(c)(5), DARPA agrees it shall not disclose such information to persons outside the Government without permission of the Contractor.

I. Preference for American Industry

Notwithstanding any other provision of this clause, the Contractor agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by DARPA upon a showing by the Contractor that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

The Contractor agrees that, with respect to any subject invention in which it has retained title, DARPA has the right to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DARPA has the right to grant such a license itself if DARPA determines that:

1. Such action is necessary because the Contractor or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

ARTICLE XI: DATA

A. Definitions

1. "Unlimited Rights", as used in this Article means the rights of the Government to use, modify, reproduce, perform, display, release or disclose Data, in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
2. "Government Purpose Rights", as used in this article, means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only.
3. "Limited Rights", means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical Data outside the Government, use the Data to be used by another party, except that the Government may reproduce, release or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if reproduction, release, disclosure, or use is:
 - (i) Necessary for emergency repair and overhaul; or
 - (ii) A release or disclosure of Data (other than detailed manufacturing or process Data) to, or use of such Data by, a foreign government that is in the interest of the Government and is required for evaluation or informational purposes;
 - (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of Data and the contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
4. "Data", as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing, affordability, design and manufacturing processes and/or tools, or management information and does not include subject inventions included under Article X.

B. Allocation of Principal Rights

1. This Agreement shall be performed with mixed Government and Boeing funding. The Parties agree that in consideration for Government funding, Boeing intends to reduce to practical application items, components and processes developed under this Agreement.
2. Boeing agrees to retain and maintain in good condition until five (5) years after completion or termination of this Agreement, all Data necessary to achieve practical application. In the event of exercise of the Government's March-in Rights as set forth under Article X or subparagraph B.3 of this article, Boeing agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Government Purpose Rights, as defined in paragraph A above, to this delivered Data.

3. Boeing agrees that, with respect to Data necessary to achieve practical application, DARPA has the right to require Boeing to deliver all such Data to DARPA in accordance with its reasonable directions if DARPA determines that:
- (a) Such action is necessary because Boeing or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the technology developed during the performance of this Agreement;
 - (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Boeing, assignee, or their licensees; or
 - (c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Boeing, assignee, or licensees.
4. The Government shall be granted Unlimited Rights to all Data developed exclusively with Government funds under this Agreement or the Phase I Agreement and to Data defined in Article XX, Agreement Deliverables, paragraph I.
5. With respect to all Data developed in the performance of this Agreement or the Phase I Agreement, the Government shall be granted Government Purpose Rights, except for Data pertaining to the following subjects:

- a.
- b.
- c.

The Government shall be granted Limited Rights in the Data listed in (a) – (c). The contractor will use reasonable efforts to flow down the provisions of this Article to its Suppliers. Any exceptions to the provisions of this Article taken by the Contractors Suppliers may only be approved pursuant to a mutually agreed to modification to this Article.

C. Marking of Data

1. Pursuant to paragraph B above, any Data delivered under this Agreement with Unlimited Rights shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-99-9-0003 between the Government and Boeing.

2. Pursuant to paragraph B above, any Data delivered under this Agreement with other than Unlimited Rights shall be marked with the following legend to be marked prominently on drawings and the title or first page of multi-page documents:

BOEING PROPRIETARY

Copyright © 199X or 200X (year in which work is created) The Boeing Company
Unpublished Work. All Rights Reserved.

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-99-9-0003 between the Government and Boeing.

Subsequent pages of multi-page documents delivered with other than Unlimited Rights shall be marked as follows:

BOEING PROPRIETARY - See Title page for details.

D. Lower Tier Agreements

Boeing shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE XII: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for three years thereafter.

A. Definition

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this Agreement.

B. General

The Parties agree that research findings and technology developments in SEAD/Strike mission technology may constitute a significant enhancement to the national defense, and to the

economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:
 - (a) sales of products or components, or
 - (b) licenses of software or documentation related to sales of products or components, or
 - (c) transfer to foreign subsidiaries of the Contractor for purposes related to this Agreement, or
 - (d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or Institution to perform its approved role under this Agreement.
2. The Contractor shall provide timely notice to the Government of any proposed transfers from the Contractor of technology developed with Government funding under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Contractor, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide equivalent benefits to the Contractor.
3. In any event, the Contractor shall provide written notice to the Government Program Manager and Agreements Administrator of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Contractor's written notification, the Government Agreements Administrator shall advise the Contractor whether it consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar days after receipt and the Government provides no decision, the Contractor may utilize the procedures under Article IX, Disputes. No transfer shall take place until a decision is rendered.
4. In the event transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, Boeing shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other

purposes, particularly to effectuate the intent of this Agreement. Upon request by the Government, Boeing shall provide written confirmation of such licenses.

D. Lower Tier Agreements

The Contractor shall include this Article, suitably modified, in all subcontracts or lower tier Agreements, for experimental, developmental, or research work.

ARTICLE XIII: CIVIL RIGHTS ACT

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in employment.

ARTICLE XIV: INSURANCE

Contractor shall maintain the types of insurance listed in FAR 28.307-2(a), (b), and (c) with the minimum amounts of liability indicated, or commercial equivalent.

ARTICLE XV: GOVERNMENT FURNISHED EQUIPMENT PROPERTY, INFORMATION FACILITIES AND SERVICES

The contractor has requested Government furnished equipment, property, information, facilities and services listed in the Boeing Cost Response, Volume 4, Section 2.8. In addition, Government Leveraging Agreements are included in this Agreement as Appendix 2. The Government will provide assistance, and where appropriate, formally request that the Government office with cognizance over the item release or provide to the contractor within the desired timeframe. Any cost to the government program manager for the requested GFE and leveraging agreements referenced above will be deducted from the Phase II Total Estimated Government Cost of \$110M on this agreement. Accountability and control of Government Property will be accomplished in accordance with Boeing's best industrial practice.

ARTICLE XVI: SECURITY

This program shall be provided protection as required by the appropriate security requirements required by the DD Form 254 (Attachment DD 254 preceeding Attachment 1; to be provided by DARPA). The highest levels of classification involved in the performance of this Agreement is Top Secret/SAR and Sensitive Compartmented Information (SCI). It is the Government's position that the highest security classification of any item deliverable as a result of this Agreement is Top Secret/SAR or SCI. In order to develop certain technologies, it is anticipated that a Contractor may need capability to access, handle and generate both Top Secret/SAR and SCI information. This agreement is unclassified.

ARTICLE XVII: SUBCONTRACTORS

The Contractor is authorized to use best commercial practices under this Agreement. This authorization includes, but is not limited to, waiver from competitive bidding where appropriate and the relief from normal flow-down requirements to subcontractors where it impacts the UCAV/ATD Program.

ARTICLE XVIII: FLIGHT RISK

The Government's liability for risk of loss or damage to the air vehicles and mission control station during the flight and performance testing at NASA Dryden Flight Test Center, will be subject to the provisions of DFARS clause 252.228-7002, Aircraft Flight Risks (Sep 96). With

respect to paragraph (e) of this clause, the contractor will be bound by the operating procedures in effect at NASA Dryden Test Center during performance of this agreement.

ARTICLE XIX: RESERVED

ARTICLE XX: AGREEMENT DELIVERABLES

A. Due with Proposal

- (1) Proposal volumes 1-9
- (2) Final Phase I SUPPRESSOR and THUNDER databases

B. Due at the end of Phase I

- (1) All data produced during and for Phase I

C. Due annually

- (1) Revised SMP
- (2) Revised UTP
- (3) Revised UOS SCD
- (4) Revised UOS CONOPS and FOMs
- (5) Revised SUPPRESSOR and THUNDER databases

D. Due at every Milestone Review

- (1) Hard and soft copy of all Milestone review materials
- (2) Proposed incentive criteria for the next milestone evaluation period
- (3) Revised program documents per Section 2.5, Table 2.6, and the contractor's change process described in their IMP

E. Due monthly

- (1) Business status report

F. Due at completion of Phase II

- (1) RR&OE Program Plan
- (2) RR&OE UDS SRD and SDD
- (3) RR&OE UOS SCD
- (4) Final Phase II UOS CONOPS and FOMs
- (5) Final Phase II SUPPRESSOR and THUNDER databases

G. Due at completion of the RR&OE Phase

- (1) EMD UOS SRD
- (2) EMD UOS Preliminary System Specification

H. Due at end of the Agreement

- (1) Final UOS effectiveness and affordability FOMs

(2) Final SUPPRESSOR and THUNDER databases

I. Deliverable UDS Assets

Boeing will deliver to the Government at the completion of this Agreement or the RR&OE Phase Agreement if exercised, all residual UDS assets including, but not limited to all air vehicles, mission control elements and all unique support assets. Boeing will not remove any components, or reduce functionality, from the residual assets provided to the Government. All operations manuals, logs, software (including both source and executable forms), data, hardware and unique support assets required for the Government to conduct independent, post Agreement flight testing and to maintain the UDS system will be delivered to the Government. Acceptance of title for these assets will be determined by the Government Program Manager and Agreements Officer and will be evidenced by a modified DD Form 250, which Form shall be provided by the Government. Boeing shall maintain possession of all assets throughout the term of this Agreement and any follow on Agreement for the purposes of executing the terms of that Agreement.

The Data deliverables listed in paragraph I are subject to the Data Rights provisions contained in Article XI.

ARTICLE XXI: FAR CLAUSES

This agreement incorporates the following clauses by reference, with the same force and effect as if they were given in full text.

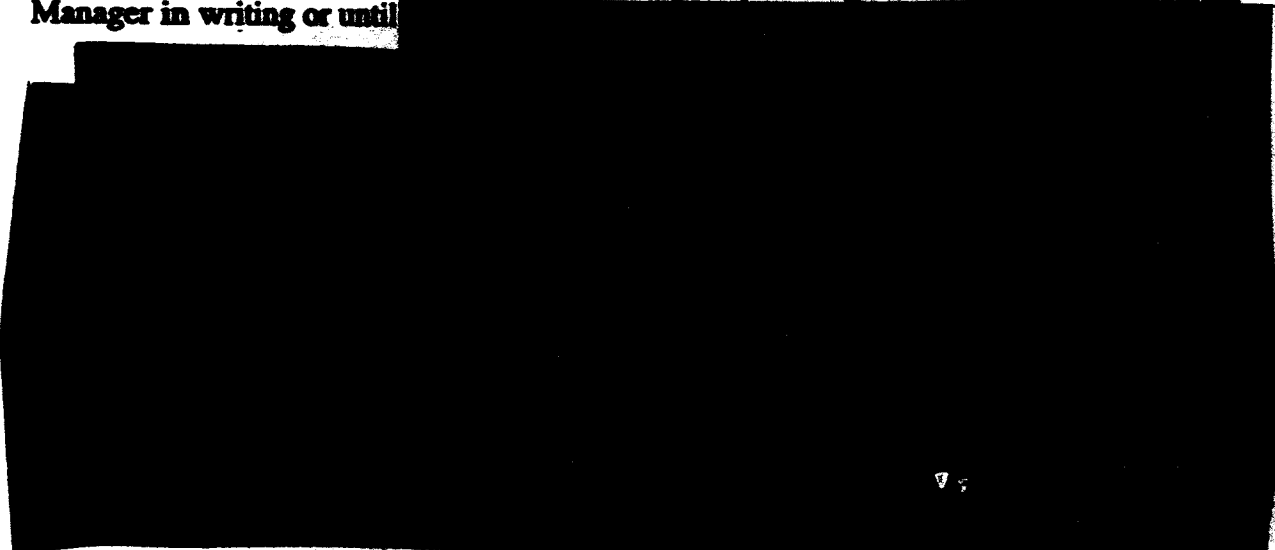
52.243-02 Changes Cost-Reimbursement (Aug 87) and Alternate V (Apr 84)

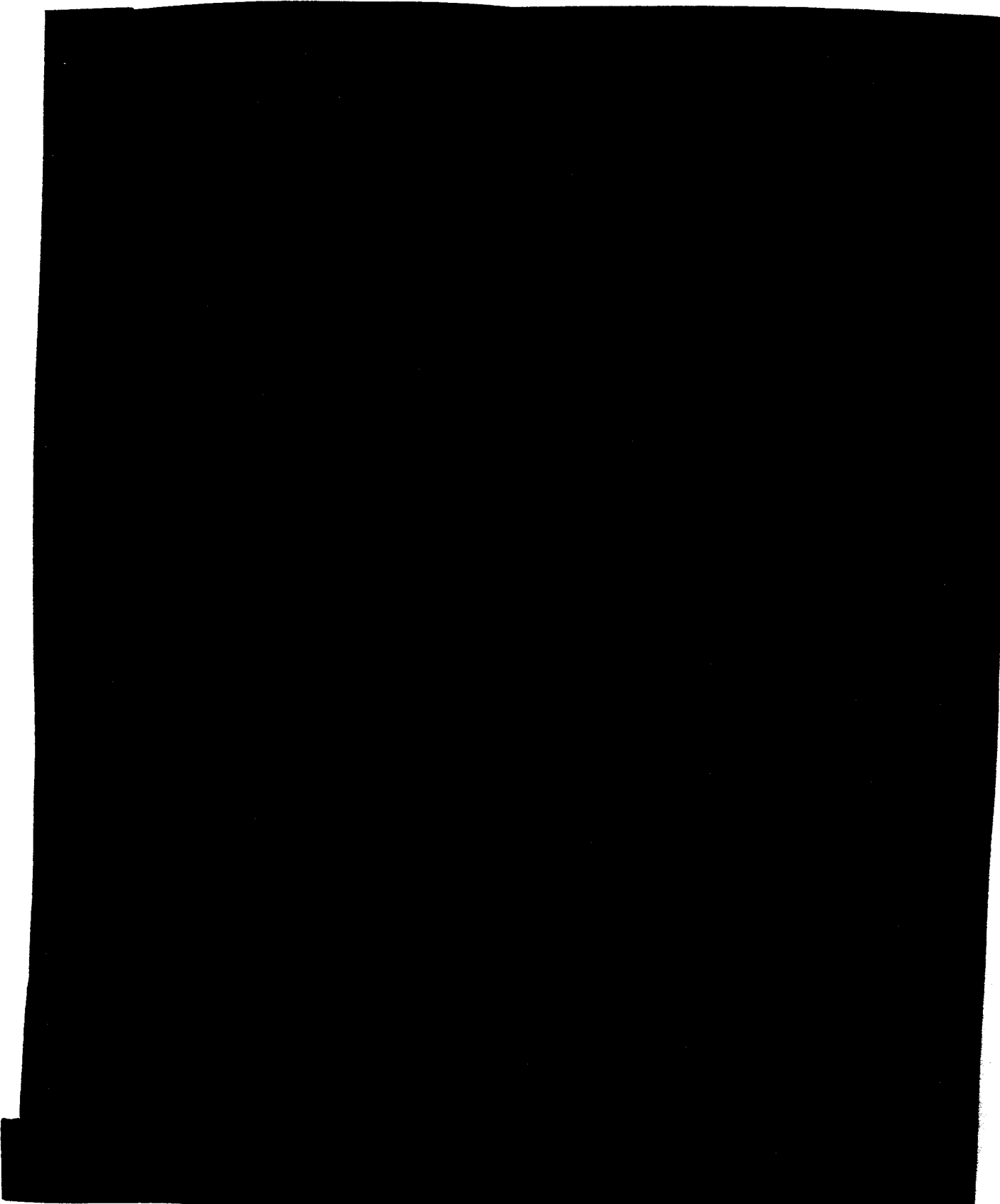
52.232-22 Limitation of Funds (Apr 94)

52.230-02 Cost Accounting Standards (Apr 98) (applicable to IRAD pool expenditures)

ARTICLE XXII - PHASE II COMPLETION CRITERIA

The following Phase II completion criteria define the successful completion of all Phase II activities. By entering into this Agreement, Boeing agrees to continue to perform the efforts defined in this Agreement until all Completion Criteria, as defined below, have been satisfactorily completed and mutually acknowledged by Boeing and the Government Program Manager in writing or until





ARTICLE XXIII: OPTION FOR RISK REDUCTION AND OPERATIONAL EVALUATION (RR&OE) PHASE

The priced option for Item 0002, Risk Reduction and Operational Evaluation (RR&OE) Phase may be exercised in writing on or before February 1, 2002. The Government and the contractor may, upon bilateral agreement, exercise this option item subject to the provisions contained in Article IV of this Agreement.

ARTICLE XXIV - YEAR 2000 COMPLIANT

All Information Technology (IT) under this agreement shall be "year 2000 compliant".

Information Technology, as used in this part, means all computer related hardware and/or software purchased and/or developed under this agreement.

"Year 2000 compliant," as used in this part, means, with respect to information technology, that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

ARTICLE XXV - BOEING AND SUPPLIER CONTRIBUTIONS

A. The Schedule for Boeing's Phase II funding commitment is provided in the following table:

B. Boeing and its suppliers may make additional direct contributions to the UCAV Program to achieve the work set forth in this Agreement subject to approval by the Government Program Manager and Agreements Officer. Such additional contributions may include, but are not limited to, concurrent IR&D activities, capital expenditures, or other direct investments that directly support the program plan.

C. To the extent that additional contributions are made by either Boeing or any of its suppliers and approved by the Government Program Manager and Agreements Officer, the Agreement starting point for the 50/50 share ratio identified in Article IV above shall be adjusted accordingly via formal modification to the Agreement. Specifically, the value of Government approved investments made by the Contractor and its suppliers to achieve overall program goals and objectives shall be added to the estimated cost of this Agreement prior to the share ratio being applied. In no case shall the maximum combined Government/Boeing obligation under this Agreement exceed \$180 million without the formal agreement of both parties to proceed further, and subsequent modification to this Agreement.

END OF AGREEMENT

APPENDICE

APPENDIX 1

RESERVED

THIS SECTION WAS RESERVED FOR FUTURE USE.
IT WAS NEVER USED.

APPENDICES

APPENDIX 2

GOVERNMENT LEVERAGING AGREEMENTS SUPPORTING DOCUMENTATION

ENTIRE SECTION REMOVED 78 pages

ATTACHMENT

ATTACHMENT DD254

CONTRACTS SECURITY CLASSIFICATION SPECIFICATION

ENTIRE SECTION REMOVED -- 2 pages

ATTACHMENT

ATTACHMENT TDD

TASK DESCRIPTION DOCUMENT

ENTIRE SECTION REMOVED -- 43 pages

ATTACHMENT

ATTACHMENT 1

INTEGRATED MASTER PLAN

ENTIRE SECTION REMOVED -- 58 pages

ATTACHMENT

ATTACHMENT 2

MILESTONE REVIEW AND INCENTIVE PLAN

ENTIRE SECTION REMOVED -- 8 pages

ATTACHMENT

ATTACHMENT 3

WORK OUTLINE DICTIONARY

ENTIRE SECTION REMOVED -- 15 pages

ATTACHMENT

ATTACHMENT 4

PHASE II PROGRAM PLAN

ENTIRE SECTION REMOVED -- 88 pages

ATTACHMENT

ATTACHMENT 5

RR&OE PHASE II PROGRAM PLAN

ENTIRE SECTION REMOVED -- 47 pages